

401.105-2

(1) Daily issues of the FEDERAL REGISTER,

(2) Cumulative form in the CFR, and,

(3) Electronic form on the USDA Departmental Administration Procurement Homepage (see 401.170).

(c) Section 553(a)(2) of the Administrative Procedure Act, 5 U.S.C. 553, provides an exception from the standard public rulemaking procedures to the extent that the rule involves a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts. In 1971, Secretary of Agriculture Hardin announced a voluntary partial waiver from the Administrative Procedure Act exception, and USDA agencies generally are required to provide notice and an opportunity for public comment on proposed rules (36 FR 13804, July 24, 1971). The AGAR has been promulgated and may be revised from time to time in accordance with the rulemaking procedures of the Administrative Procedure Act. The USDA also is required to publish for public comment procurement regulations in the FEDERAL REGISTER, pursuant to the Office of Federal Procurement Policy Act (41 U.S.C. 418b), and FAR 1.301.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 44, Jan. 3, 2005]

401.105-2 Arrangement of regulations.

AGAR coverage parallels the FAR in format, arrangement, and numbering system. However, subdivisions below the section and subsection levels may not always correlate directly to FAR designated paragraphs and subparagraphs.

401.105-3 Copies.

Copies of the AGAR published in CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Requests should reference Chapter 4 of Title 48 CFR.

401.106 OMB approval under the Paperwork Reduction Act.

The following OMB control numbers apply to USDA solicitations and specified information collections within the AGAR:

48 CFR Ch. 4 (10-1-05 Edition)

AGAR segment	OMB Control No.
411.170	0505-0014
415.2	0505-0013
436.575	0505-0011
437.110	0505-0015
437.270	0505-0016
452.211-1	0505-0014
452.215-71	0505-0013
452.236-75	0505-0011
452.237-74	0505-0015
452.237-76	0505-0016

[61 FR 53646, Oct. 15, 1996, as amended at 64 FR 52674, Sept. 30, 1999]

401.170 Electronic access to regulatory information.

The USDA Departmental Administration Procurement Homepage provides access to the AGAR, AGAR amendments (circulars), AGAR Advisories, and other USDA procurement policy and guidance in electronic form. The Internet address for the Procurement Homepage is URL <http://www.usda.gov/procurement/>.

[63 FR 26994, May 15, 1998, as amended at 70 FR 44, Jan. 3, 2005]

Subpart 401.2—Administration

401.201 Maintenance of the FAR.

401.201-1 The two councils.

(a) USDA's representative on the Civilian Agency Acquisition Council is designated by the SPE.

(b) The Procurement Policy Division will coordinate proposed FAR revisions within USDA.

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 44, Jan. 3, 2005]

Subpart 401.3—Agency Acquisition Regulations

401.301 Policy.

(a) The SPE, subject to the authorities in 401.103 and FAR 1.301, may issue and publish Departmental regulations, that together with the FAR, constitute Department-wide policies, procedures, solicitation provisions, and contract clauses governing the contracting process or otherwise controlling the relationship between USDA (including any of its contracting activities) and contractors or prospective contractors.

(b) Each designated head of a contracting activity (HCA) is authorized to issue or authorize the issuance of, at any organizational level, internal guidance which does not have a significant effect beyond the internal operating procedures of the activity, or a significant cost or administrative impact on offerors or contractors. Internal guidance issued by contracting activities will not be published in the FEDERAL REGISTER. HCA's shall ensure that the guidance, procedures, or instructions issued—

(1) Are consistent with the policies and procedures contained in this chapter;

(2) Follow the format, arrangement, and numbering system of this chapter to the extent practicable;

(3) Contain no material which duplicates, paraphrases, or is inconsistent with this chapter; and

(4) Are numbered and identified by use of alphabetical suffixes to the chapter number as follows:

4A [Reserved]

4B Agricultural Research Service.

4C Farm Service Agency.

4D Rural Development (mission area).

4E Food Safety and Inspection Service.

4F [Reserved]

4G Forest Service.

4H [Reserved]

4I Natural Resources Conservation Service.

4J [Reserved]

4K Food and Nutrition Service.

4L Animal and Plant Health Inspection Service.

4M [Reserved]

4N Departmental Administration.

4O-4P [Reserved]

4R Office of Inspector General.

4S [Reserved]

[61 FR 53646, Oct. 15, 1996, as amended at 70 FR 44, Jan. 3, 2005]

401.304 Agency control and compliance procedures.

(a) The AGAR System is under the direct oversight and control of the SPE, who is responsible for review and issuance of all Department-wide acquisition regulations published in the FEDERAL REGISTER to assure compliance with FAR part 1.

(b) The SPE is also responsible for review and issuance of unpublished, De-

partment-wide internal guidance under the AGAR System.

(c) HCA's are responsible for establishment and implementation of formal procedures for oversight and control of unpublished internal guidance issued within the contracting activity to implement FAR or AGAR requirements. These procedures shall be subject to the review and approval by the SPE.

(d) The SPE is responsible for evaluating coverage under the AGAR System to determine applicability to other agencies and for recommending coverage to the FAR Secretariat for inclusion in the FAR.

(e) Recommendations for revision of existing FAR coverage or new FAR coverage shall be submitted by the HCA to the SPE for further action.

401.370 Exclusions.

Subject to the policies of FAR subpart 1.3, certain USDA acquisition policies and procedures may be excluded from the AGAR under appropriately justified circumstances, such as:

(a) Subject matter which is effective for a period less than 12 months.

(b) Subject matter which is instituted on an experimental basis for a reasonable period.

(c) Acquisition procedures instituted on an interim basis to comply with the requirements of statute, regulation, Executive Order, OMB Circular, or OFPP Policy Letter.

401.371 AGAR Advisories.

The SPE may issue AGAR Advisories, consistent with the policies of the FAR and the AGAR, for the following purposes:

(a) To communicate Department-wide policy and/or procedural guidance to contracting activities;

(b) To delegate to procurement officials authority to make determinations or to take action to implement the policies of the FAR or the AGAR; and,

(c) To establish internal policy and procedures on an interim basis, prior to incorporation in the AGAR or in a Departmental Directive.

(d) AGAR Advisories are only available in electronic format on the USDA